SINGAPORE REPORTS

FOO SIANG HIM v. ATTORNEY-GENERAL

[O.C.J. (Lai Kew Chai J.) August 7, 1984]

[Singapore – Suit No. 1216 of 1982]

Road Traffic – Fatal accident – Motorcyclist colliding into parked army jeep – Alcohol content in deceased motorcyclist's blood – No evidence of being affected by alcohol.

Tort – Negligence – Fatal accident – Damages.

Damages – Fatal accident – Quantum agreed at $89,600.

The plaintiff was the administrator of the deceased's estate. On August 23, 1979 at about 6.30 p.m. the deceased was riding his motorcycle along Mandai Road in the direction of Sembawang Road. He had ridden from his home in Marsiling Drive for some 10-12 km when he met with the fatal accident. DW1 and DW2, who were military personnel in the army, had attempted to push-start the jeep from the grass verge where it was parked onto the road.

The defendants proved that the blood sample of the deceased revealed that it contained 62 mg. ethanol per 100 ml. of blood. The learned State Counsel contended that estimating that 62 mg. ethanol could be the result of having consumed some 4 glasses of beer, the deceased's ability to keep a proper look-out must have been adversely affected.

Held: (1) the defendant was entirely to blame for the accident. DW1 and DW2 had created a sudden danger by coming onto the road suddenly and blocking virtually the entire path of the deceased. It was no good to say that he should have swerved to his right. His attempt to stop by braking to avoid the collision was an act of evasion that was a decision made in the agony of the moment and was reasonable in all the circumstances;

(2) the sudden danger was created when the deceased was some 30 metres from the jeep and any signal would have been too late;

(3) the deceased's ability to keep a proper look-out must have been unimpaired. On seeing the sudden danger created by the jeep coming onto the road suddenly, he took the usual reaction time, followed by the jamming of his brakes. He was able to retain control of his motorcycle and stayed on course. If the alcohol had any effect on him such that his look-out was affected, he could not have retained the control and balance of his motorcycle;

(4) the plaintiff should be given agreed damages of $89,600 with costs to be taxed.

CIVIL SUIT.

Karuppan Chettiar for the plaintiff.

Charles Lim Aeng Cheng (State Counsel) for the defendant.

Lai Kew Chai J. (delivering oral judgment): I find the defendant entirely to blame for the accident.

On August 23, 1979 at about 6.30 p.m. Foo Moo Say, the deceased, was riding his motorcycle AV4134 along Mandai Road in the direction of Sembawang Road to see his friend. According to his brother, who saw the deceased before he left home at about 6 p.m. that evening, and whose evidence I accept, he appeared normal and was not in any way affected by alcohol. He had ridden from his home in Marsiling Drive for some 10-12 km when he met with the fatal accident. I find that DW1 and DW2, who were military personnel in the army, had attempted to push-start jeep No. 1307 from the grass verge where it was parked onto the road. It is to be emphasised that according to AB7, a photograph of the scene of the accident taken shortly after the event, the grass verge was on higher ground, some 6 inches or so higher than the road surface of Mandai road. The road was also sloping towards the direction of Sembawang. I am satisfied after hearing the evidence that the defendants in push-starting the jeep had created a sudden danger in the way of the deceased.

According to Corporal Neo Choon Teow (DW1), the commander of the jeep and the driver, Neo Aik Chian (DW2), they had completed their road block duties that evening at Mandai Road, 18½ km milestone. The road block was to enable the soldiers to cross the road. At about 6.30 p.m. they started to push-start the jeep which had a weak battery. The jeep was parked on the grass verge. The driver pushed the jeep from the near-side, near the driver's seat with one hand manipulating the steering wheel and the other hand pushing the jeep. Corporal Neo Choon Teow pushed the jeep from the rear. The hazard lights of the jeep were switched on. The jeep was manoeuvred onto the road by a sharper turn than usual to the driver's right because there was a tree in front of the jeep and there was a depression on the grass verge in front of the jeep. When the front portion of the jeep and the two front wheels were on the road, the jeep stopped according to them. The driver got into the jeep. The corporal began to push the jeep. He heard the approaching roar of the motorcycle, he turned and waved down the deceased. He then heard a screech, shortly followed by the collision.

I do not accept their evidence that the jeep had been pushed slowly onto the road. I also do not accept that the jeep had stopped. The jeep was parked on the grass verge, which was a slope with a level of some 6 inches higher than the road at the edge of the road. Its descent onto the road from a higher level must have been at a speed faster than that of a jeep pushed from level ground. Its sharp

right turn onto the road must have taken place within the briefest time frame, at the end of which, the jeep's front nearside was very near the middle broken white lines. During that briefest of moments, the deceased was approaching them, riding his motorcycle along Mandai Road down the slope. The deceased was, I find, at a distance of about 30 metres away when the sudden danger was created. That was the distance, I find, when he first saw the vehicle coming onto the road. Having regard to the police sketch plan, it is significant to note that the deceased had jammed the brakes of his motorcycle for some 15 metres and the motorcycle had remained on course. The deceased did not lose control of the motorcycle for some 15 metres. Having regard to this piece of hard evidence, I am satisfied that the deceased was able to control his motorcycle in a most difficult situation. I appreciate that the distance of 15 metres was not the entire braking distance, which was broken by the impact with the jeep. I am also not unmindful that this was a straight stretch of road, that visibility was good, but I find that the defendants had created a sudden danger by coming onto the road suddenly and blocking virtually the entire path of the deceased. It was no good to say he should have swerved to his right. His attempt to stop by braking to avoid the collision was an act of evasion that was a decision made in the agony of the moment and was reasonable in all the circumstances. I must also say that I did not accept DW1's evidence that he had warned the deceased of the danger by waving his hands at him. I do not accept the evidence of DW1 and DW2 that the hazard lights were on. It was an improbable story, seeing that the battery was weak. In any event, it would have been better if DW2, the driver of the jeep, had instead given his right hand indicator when moving from the grass verge. Anyway, this aspect of the case is not material as I find that sudden danger was created when the deceased was some 30 metres from the jeep and any signal would have been too late. I have come to this conclusion having regard to the topography of the grass verge, the reaction time the deceased must have taken, and the braking distance, which was, however, broken as gathered from the police sketch plan, and what the sketch plan has shown as the consequence of the impact.

It was proved by the defendants that the blood sample of the deceased revealed that it contained 62 mg ethanol per 100 ml of blood. The learned State Counsel also referred to the evidence of the brother of the deceased that the deceased would go red by drinking just a glass of beer, suggesting that the deceased was markedly affected by alcohol. Estimating that 62 mg ethanol could be the result of having consumed some 4 glasses of beer, the learned State Counsel contended that the deceased's ability to keep a proper look-out must have been adversely affected. Relying on findings from traffic authorities in Singapore and in England, the learned State Counsel pointed out that the level of 62 mg ethanol per 100 ml blood in a road user poses a danger to other road users.

I would have given more weight to this submission, as I do discourage any level of alcoholism in a road user, but for the piece of hard evidence in this case. The deceased's ability to keep a proper look-out must have been, and I find that it was, unimpaired. On seeing the sudden danger created by the jeep coming onto the road suddenly, he took the usual reaction time, followed by the jamming of his brakes. The most significant point which impressed me was that the deceased was able to retain control of his motorcycle and stayed on course. If the alcohol had any effect on him such that his look-out was affected, he could not have, in my opinion, retained the control and balance of his motorcycle. I was also influenced by the evidence of the brother of the deceased and by the fact that the deceased had ridden his motorcycle for some 12 km from his home without any evidence of being affected by the alcohol content in his blood until the fatal accident.

As damages were agreed, there will be judgment for the plaintiff in the sum of $89,600 with costs to be taxed. I also grant the usual consequential orders. There is also liberty to apply with regard to the appportionment of the judgment sum.

Order accordingly.

Solicitors: *Murphy & Dunbar.*